IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.902 OF 2000

Hanumanta @ Chaddi Tayappa Kamathi
@ Kotkar,
Life convict prisoner No.C/11493,
Yeravada Central Prison,
Pune-411 006. .. Appellant.
(Orig.accused)

v/s.

The State of Maharashtra
(At the instance of Dharavi
Police Station C.R.No.403/97) .. Respondent.
(Orig.Complainant)

Ms.Usha Kejariwal, Additional Public Prosecutor for
State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 10th March, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

The Additional Sessions Judge, Greater Bombay vide her judgment dated 26.7.2000 convicted Hanumanta @ Chaddi Tayappa Kamathi @ Kotkar for the offence punishable under section 302 IPC for having committed murder of his wife Yallamma and sentenced him to suffer life imprisonment. He has also been convicted for the offence punishable under section 498-A IPC and sentenced to suffer rigorous imprisonment for two years. The accused is in appeal before us.

2. At the outset, we may notice that initially vide order dated 20.8.2001, Shri C.R.Mehta, advocate was appointed by the court to represent the appellant. Then advocate Shri K.K.V.Kurup and Ms.A.N. Vijayalakshmi filed vakalatnama on behalf of the accused-appellant on 17.4.2002. Advocate Ms.A.N.Vijayalakshmi was the court appointed advocate in the trial court. She seems to have spent money for preparing the private paper-book and accordingly, by order dated 24.11.2003, the Division Bench appointed Ms.A.N.Vijayalakshmi as court appointed advocate for the appellant and the expenses incurred by her were ordered to be reimbursed by the Legal Aid Committee. However, neither of the advocates appears for the appellant today. As the accused is in jail since 1997, we thought it proper to hear and decide the appeal with the assistance of the learned Additional Public Prosecutor. The appointment of any other advocate, we thought, may result in further delay in disposal of appeal.

3. Hanumanta ('the accused') married Yellamma ('the deceased') in the month of December, 1989. In the year 1992, one daughter was born out of that wedlock. There used to be frequent quarrels between

the accused and the deceased. The accused used to ask the deceased to bring money from her mother Smt.Shekamma (PW1). The accused seems to have been indulging in theft. On 9.8.97, Yellamma went to her mother's place to get the money as demanded by the accused. The mother (PW1) declined to pay anything to Yellamma. Yellamma came back to her house. Yellamma's mother went to the uncle of the accused on that day and requested him to intervene in the matter. On 10.8.97, Yellamma came crying to her mother's house asking her as to why did she contact the uncle of the accused. At this time, the accused also came to the house of PW1 and started beating Yellamma. PW1 tried to intervene but she was also beaten by the accused. Yellamma then ran away and entered into the house of Bhima. The accused followed her to the house of Bhima and closed the door from inside. PW1 tried to open the door and knocked it. However, the door could not be opened. With the help of few people, the door was got opened. PW1 found that the room was full of smoke; Yellamma was burnt and lying on the floor. By that time the accused had run away by jumping from the window of mezzanine floor. Yellamma was taken to Sion Hospital. Her dying declaration was recorded by the Special Executive Magistrate Digambar Purshottam Patkar (PW4) between 01.00 to 01.40 p.m.

Yellamma was found to have sustained 96% of the superficial to deep burns. She died at about 03.00 p.m. Initially the crime was registered at Dharavi Police Station for the offence under section 307 IPC but it was altered to section 302 IPC on the death of Yellamma. Shrirang Digambar Kasabe (PW13) proceeded with the investigation. The accused was arrested in the afternoon of 11.8.97. The statements of the witnesses were recorded and upon completion of the investigation, the accused was chargesheeted and tried for the offences punishable under sections 302 and 498-A IPC.

4. The prosecution mainly relied upon the multiple dying declarations to bring home the guilt of the accused.

5. Smt.Shekamma (PW1) is the mother of the deceased. She has deposed about the constant demand of money by the accused from her and the illtreatment meted to her daughter Yellamma. On the date of incident in the morning, Yellamma went to her place. The accused arrived there and started beating her daughter. According to PW1, when she intervened, the accused beat her also. Yellamma ran and entered into the house of Bhima. PW1 saw the accused following her to that house and closing the

door from inside. PW1 tried to open the door and knocked it but she could not. Then with the help of few people, the door was got opened and it was found that Yellamma was burnt and lying on the floor. The accused had disappeared. PW1 asked Yellamma as to what happened. Yellamma told her that the accused poured kerosene and set her on fire by a lighter. Her evidence shows that the house of the accused was hardly one or two minutes away from her house. There is nothing to disbelieve her. She had seen the accused following her daughter to the house of Bhima and then closing the door from inside. When the door was got opened with the help of few people, it was found that Yellamma was burnt and lying on the floor. There is nothing unnatural in Yellamma telling her mother that the accused poured kerosene and set her on fire by the lighter.

6. Ananda Malappa Venelo (PW2) is the brother of the deceased. His evidence also shows that when he asked Yellamma about the incident, she told that accused had burnt her with lighter after pouring kerosene. He had not seen the incident of burning but he proved the quarrel that ensued between the accused and the deceased immediately before the occurrence of the incident. It is but natural for the sister to tell her brother about the incident

that the accused had burnt her with the lighter after pouring kerosene.

7. Digambar Purshottam Patkar (PW4)- Special Executive Magistrate was called by the Dharavi Police Station to record the statement of the deceased. He reached Lokmanya Tilak Hospital, Sion at 12.45 p.m. Yellamma was found in burnt condition. The Medical Officer on duty permitted him to record the statement of Yellamma. He recorded the dying declaration in the question and answer form. Yellamma told him that there was quarrel between her and her husband and when she was running towards Bhima's house, the accused followed her and bolted the door from inside. The accused poured kerosene and set her on fire from backside with the lighter. Yellamma told him that thereafter the accused ran away by jumping from mezzanine floor of the said house. The dying declaration is Exhibit-11 on record and is proved legally by the evidence of PW4. The written dying declaration (Exhibit-11) recorded by PW4 is consistent with the oral dying declaration made by Yellamma to her mother and brother immediately after the incident.

8. Vijaya Vyankatesh Nandipal (PW5) resides opposite the house of PW1. According to her, when

she came to know that Yellamma was burnt and was admitted to Sion Hospital, she went to see her at around 11.30 a.m. and met Yellamma in Ward No.23. She asked her about the incident. Yellamma told her that since she did not bring Rs.5000/- from her mother, the accused burnt her alive. Yellamma told her that the accused poured kerosene and set her on fire with the lighter. There is nothing in cross-examination of this witness that discards her trustworthiness.

9. Neela Vishwanath Vakare (PW7) is also known to PW1 and her family members and she also deposed to the effect that when she went to Sion Hospital, Yellamma told her that the accused poured kerosene and burnt her with the lighter.

10. Anil Ramchandra Gaikwad (PW8) was on duty at the Casualty Department on 10.8.97. Yellamma was brought to the Casualty Department at about 11.05 a.m. According to him, he asked Yellamma as to how she was burnt. Yellamma told him that her husband poured kerosene and set her on fire. According to him, Yellamma was taken to Ward No.23 where the doctor attended to her and wrote the history given by Yellamma in UPR Register.

11. Dr.Anant Chintaman Joshi (PW9) was attached to the Burns Unit of Sion Hospital. At the relevant time he was working as Registrar. Dr.Vaibhav Chavan (PW11) was the Houseman there. After admission of Yellamma in the Burns Ward, PW9 and PW11 attended Yellamma. Yellamma gave history according to which she sustained homicidal burn. The medical history written by PW11 and PW9 are marked as Exhibits 22-A and 22-B respectively. That records that there was fight between Yellamma and her husband and her husband burnt her by pouring kerosene.

12. Bharat Shivaji Jadhav (PW10) was attached to Dharavi Police Station as Police Sub Inspector. He recorded the statement of Yellamma. According to this witness, Yellamma told him that her husband used to beat her and would constantly demand money from her mother. He stated that Yellamma told him that on 10.8.97, there was quarrel between her and her husband at her mother's place and when she went running to Bhima's house, her husband followed her and bolted the door from inside. Her husband poured kerosene and set her on fire by the lighter and then ran away.

13. Dr.Mukesh Shamrao Ghuge (PW12) conducted the autopsy at the dead body of Yellamma. According to

him, Yellamma had sustained 96% of superficial to deep burns and cause of death was shock following burns. All the burn injuries were sufficient in ordinary course of nature to cause death and the said injuries were ante-mortem.

14. This is a case where there are multiple dying declarations, oral and written, on record. There is no inconsistency in these dying declarations on material aspects. The dying declarations, written as well as oral are consistent that the accused poured kerosene and then set her on fire by the lighter. Though Yellamma sustained 96% of burn injuries, the doctor's evidence clearly indicate that she was in a position to make statement and that she was well-oriented. Shortly after the incident, on being questioned by her mother (PW1), the deceased told her that the accused poured kerosene and then set her on fire by the lighter. As a matter of fact, the quarrel between the accused and the deceased started at PW1's place. Actually she followed the accused when he ran after the deceased but by the time she could reach Bhima's house, the accused had already entered Bhima's house and closed the door from inside. Yellamma's statement about the incident all along had been consistent until she died at 03.00 p.m. and,

therefore, the oral dying declarations made by her to PW1, PW2, PW5 and PW7 can be safely acted upon so also the written dying declaration recorded by the Special Executive Magistrate (PW4) and the dying declarations in the form of medical history recorded by the doctors, PW9 and PW11. The said dying declarations are corroborated by the medical evidence. That the accused after setting Yellamma on fire ran away from the Mezzanine floor window is also established from the evidence on record. The dying declarations are unimpeachable and overwhelming.

15. As regards the offence punishable under section 498-A, there is ample evidence on record, particularly the evidence of PW1 and PW2 who are the mother and the brother of the deceased. There is also evidence of PW5, the neighbour of PW1 to that effect. The evidence of PW7 also establishes the demand of money made by the accused.

16. All in all, the evidence on record clearly brings home the guilt of the accused for the offences punishable under sections 302 and 498-A IPC.

17. The appeal has no merit and is dismissed.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)